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6
7 Attorneys for Defendants WORLD SAVINGS
BANK, FSB, renamed and now known as
8 WACHOVIA MORTGAGE, FSB, sued as
WORLD SAVINGS, INC. and GOLDEN WEST
SAVINGS ASSOCIATION SERVICE CO.
9

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 ALEJANDRO CAPDEVIELLE, etc., et) 08-CV-0754-LAB
13 al.,)
14 Plaintiffs,) MEMORANDUM OF POINTS AND
15 vs.) AUTHORITIES IN SUPPORT OF
16 GOLDEN WEST SAVINGS) MOTION OF WORLD SAVINGS
ASSOCIATION SERVICE CO., etc., et) BANK, FSB and GOLDEN WEST
17 al.,) SAVINGS ASSOCIATION
Defendants.) SERVICE COMPANY TO DISMISS
18) COMPLAINT
19) FRCP Rule 12(b)(6)
20)
21) Hearing Date: July 7, 2008
Time: 11:15 a.m.
Place: Courtroom 9

22 MEMORANDUM OF POINTS AND AUTHORITIES

23 1. INTRODUCTION

24 Rule 8(a)(2) of the Federal Rules of Civil Procedure states that a pleading
25 that states a claim for relief must contain “a short and plain statement of the claim
26 showing that the pleader is entitled to relief”. It would be rather difficult to
27 envision a complaint that did more violence to this rule than the complaint in the
28 case at bar. It contains 32 pages of text and 80+ pages of exhibits, the vast

majority of which is totally incomprehensible. It relies on statutes, regulations, editorial opinions and various historical events occurring over the last century that have no apparent connection to defendants or any of plaintiffs' claims. Quite simply, the complaint sets forth no facts that give rise to a claim upon which relief may be granted, and therefore it must be dismissed.

2. SUMMARY OF THE COMPLAINT.

The one thing that does appear to be fairly certain from the complaint is that these *pro se* plaintiffs are facing foreclosure of a trust deed on their property (e.g., Complaint, ¶¶22, 24 and 25, and Exhibit B) and they want to stop the foreclosure (e.g., Complaint, ¶121). Beyond those inferences, however, the complaint is a mishmash of bizarre commentary that defies rational analysis. In Complaint, ¶¶1-41, plaintiffs refer to numerous legal concepts and authorities and at least inferentially are asserting that defendants somehow are in violation thereof. Plaintiffs then attempt to set forth six purported causes of action (Declaratory Judgment, Injunctive Relief, Accounting, Cancellation of Instruments, Claim in Recoupment, and Quiet Title) based upon those concepts, but with one potential exception discussed below, none of these causes allege a legally sufficient ground for granting plaintiffs any relief, be that halting the foreclosure process, an accounting, or any of the other myriad forms of relief which may be sought by plaintiffs.

3. PLAINTIFFS HAVE STATED NO CLAIM UPON WHICH RELIEF CAN BE GRANTED

For purposes of Federal Rule of Civil Procedure 12(b)(6), a claim means a set of facts which, if established, gives rise to one or more enforceable legal rights. *Goldstein v. North Jersey Trust Co.*, 39 F.R.D. 363, 366 (S.D.N.Y. 1966). Although the federal rules of pleading are liberal, the plaintiff must still allege a cognizable legal theory and facts sufficient to support such a theory. *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

1 Here, the plaintiffs have pleaded almost no facts, and to the extent any facts
 2 have been alleged they are legally insufficient. Rather, plaintiffs appear to mount
 3 a general attack upon the laws governing real estate financing without alleging
 4 any factual or legal connection between those laws and any legally cognizable
 5 theory which would entitle them to any sort of relief. As a result, they have not
 6 stated a claim upon which relief may be granted.

7 4. WITH ONE EXCEPTION, PLAINTIFFS' CLAIMS AGAINST WORLD
 8 SAVINGS ARE ALL PREEMPTED BY HOLA.

9 A wide range of legal matters, including claims regarding the origination of
 10 home loans by federally chartered savings banks, are governed by Federal law; in
 11 particular, the Home Owners' Loan Act, 12 U.S.C. §1461 *et seq.* ("HOLA") and
 12 the regulations promulgated thereunder by the Office of Thrift Supervision.
 13 Pursuant to HOLA: "...OTS hereby occupies the entire field of lending regulation
 14 for federal savings associations ... Accordingly, federal savings associations may
 15 extend credit as authorized under federal law, including this part, without regard
 16 to state laws purporting to regulate or otherwise affect their credit activities..." 12
 17 C.F.R. §560.2. As a recent California case stated:

18 "Thus, the federal regulation is intended to preempt all state laws
 19 purporting to regulate any aspect of the lending operations of a federally chartered
 20 savings association, whether or not OTS has adopted a regulation governing the
 21 precise subject of the state provision." *Lopez v. World Savings and Loan*
 22 *Association*, 105 Cal.App. 4th 729, 738 (2003).

23
 24 Just a few months ago, the Ninth Circuit affirmed this broad preemption principle
 25 in *Silvas v. E*Trade Mortgage Corporation*, 514 F.3d 1001 (9th Cir., January
 26 2008).

27 The "state law" that is preempted by HOLA includes "any state statute,
 28 regulation, ruling, order or judicial decision." 12 C.F.R. §560.2(c). Among the

1 “state laws” preempted by HOLA are those relating to “(4) the terms of credit,
2 including amortization of loans...(10) Processing, origination (of) mortgages.” 12
3 C.F.R. §560.2(b)(4)(10).

4 Case law over the years has cast a wide net over claims preempted by
5 HOLA. In *Bank of Am. v. City & County of S.F.*, 309 F.3d 551 (9th Cir. 2002) the
6 court held: “[S]ince the passage of the HOLA in 1933, OTS regulations have
7 governed the ‘powers and operations of every federal savings and loan association
8 from its cradle to its corporate grave.’” *Id.* at 558. The Supreme Court has noted
9 that, “[i]t would have been difficult for Congress to give the [OTS] a broader
10 mandate.” *Fidelity Federal Sav. & Loan Assn. v. De la Cuesta*, 458 U.S. 141,
11 159-160 (1982).

12 Plaintiffs make reference to many state law concepts, such as “usury in
13 violation of the California constitution” (Complaint, ¶¶16 and 23), “failure to
14 validate the debt” (Complaint, ¶27), “selling(?) unlawful securities in violation of
15 the California Financial Code” (Complaint, ¶37) and various provisions of the
16 California Commercial Code (Complaint, ¶54). Although it is by no means clear
17 just how defendants did anything that would place them in violation of any of
18 these laws, these claims are clearly subject to the HOLA preemption because they
19 relate to the “origination”, “terms of credit” and “processing” of the loans and
20 bring the claims directly within the scope of HOLA preemption.¹

21 That claims challenging the manner in which a federal savings bank
22 processed a loan application are preempted by HOLA was confirmed in *Haehl v.*
23 *Washington Mut. Bank, F.A.*, 277 F.Supp.2d 933, 940 (S.D. Ind. 2003). There,
24 the court noted that the OTS regulations preempt “any state statute or judicial
25 decision purporting to regulate . . . the processing and servicing of mortgages, or
26

27 ¹ At the time the loan was issued World Savings was known as World Savings
28 Bank, FSB. It is now Wachovia Mortgage, FSB. (Request for Judicial Notice
Documents 1 and 2). Thus, at all relevant times it has been a federal savings bank
falling within the scope of HOLA.

any state statute or judicial decision that has more than an incidental effect on the lending operations of federal savings associations”. Thus, most of the laws and regulations cited by plaintiffs simply do not apply to World Savings because they are preempted by HOLA.

5. GOLDEN WEST HAS NO LIABILITY TO PLAINTIFFS

Although again the capacities of the two defendants are not clearly alleged, it is apparent from Exhibit B to the complaint that Golden West Savings Association Service Co. is merely the trustee under the deed of trust which is apparently in the foreclosure process. As such, all of its conduct in conducting the foreclosure process is privileged as a matter of law by Civil Code §2924(d)(2).

6. PLAINTIFFS’ APPARENT CLAIM UNDER THE FAIR DEBT COLLECTION PRACTICES ACT FAILS AS A MATTER OF LAW

The one claim made by plaintiffs that *might* have some superficial relevance concerns the effect of the Fair Debt Collection Practices Act, 15 U.S.C. §1692. According to Complaint, ¶41, and Exhibit C, plaintiffs (through some purported attorney in fact) made demand upon both World Savings and Golden West for “validation of the debt”. The difficulty here is that by the terms of the statute, both World Savings and Golden West are exempt from any requirement to comply with any provisions of that act. Insofar as World Savings is concerned, it is the originator of the debt and is trying to collect a debt owed to it. Therefore, it is exempt from the act under 15 U.S.C. §1692a(6)(A) because it is not a “debt collector” within the meaning of the act. *Thomasson v. Bank One, Louisiana, N.A.*, 137 F.Supp.2d 721,724 (E.D.La. 2001). With regard to Golden West, by effecting a nonjudicial foreclosure in its capacity as trustee under a deed of trust, it is not engaging in “debt collection activities” within the meaning of the act. *Hulse v. Ocwen Fed’l Bank, FSB*, 195 F.Supp.2d 1188, 1204 (D.Or. 2002).

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1 7. CONCLUSION

2 This complaint just does not state any claim upon which relief may be
3 granted and should be dismissed. Alternatively, plaintiffs must be ordered to
4 provide a more definite statement of whatever claim it is they are making.

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6 Dated: May 5, 2008

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9 By: _____


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